

AMENDED IN SENATE MAY 27, 2009

AMENDED IN ASSEMBLY MAY 7, 2009

AMENDED IN ASSEMBLY APRIL 29, 2009

AMENDED IN ASSEMBLY APRIL 16, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 329

Introduced by Assembly Member Feuer

February 18, 2009

An act to amend Sections 1923.2 and 1923.5 of the Civil Code, relating to reverse mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 329, as amended, Feuer. Reverse mortgages.

Existing law defines and regulates reverse mortgage loans and provides a disclosure notice that a lender must provide an applicant, which informs the applicant that a reverse mortgage is a complex financial arrangement and advises the applicant of the wisdom of seeking financial counseling before entering the agreement. Existing law prohibits a lender from referring a borrower to anyone for the purchase of an annuity. Existing law requires a lender to refer a prospective borrower to a housing counseling agency for counseling, as specified, prior to accepting a final and complete application for a reverse mortgage or assessing any fees.

This bill would enact the Reverse Mortgage Elder Protection Act of 2009. The bill would prohibit a lender or any other person who

participates in the origination of the mortgage from participating in, being associated with, or employing any party that participates in or is associated with any other financial or insurance activity, as provided, except as specified. This bill would also prohibit a lender or any other person who participates in the origination of the mortgage from referring a prospective borrower to anyone for the purchase of other financial or insurance products, except as specified. The bill would require the lender to provide the prospective borrower with a list of not fewer than 10 nonprofit counseling agencies in the state that have been approved by the United States Department of Housing and Urban Development for counseling, as provided. The bill would require a lender to provide a borrower with a checklist specifying issues the borrower should discuss with a reverse mortgage counselor—~~and or, if the borrower seeks counseling prior to requesting a reverse mortgage loan application, the bill would require a mortgage counselor to provide the checklist.~~ The bill would require that the checklist be signed by the counselor, if the counseling is done in person, and the prospective borrower, with a copy provided to the borrower. The bill would prohibit approval of the loan application until the signed checklist is provided to the lender.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known as the Reverse Mortgage
2 Elder Protection Act of 2009.
3 SEC. 2. The Legislature finds and declares the following:
4 (a) A reverse mortgage is a loan that allows a homeowner to
5 convert home equity into tax-free cash payments. More than 90
6 percent of all reverse mortgages are obtained through the Home
7 Equity Conversion Mortgage (HECM) program sponsored by the
8 United States Department of Housing and Urban Development.
9 Many senior citizens use reverse mortgage payments to supplement
10 retirement income or pay medical expenses. Although the HECM
11 program has been in existence since 1989, the program has seen
12 rapid growth only in the past few years. As the population ages,
13 this growth rate is expected to accelerate. The growth rate is also
14 expected to increase as sales agents and lenders turn from the
15 declining subprime and conventional mortgage market to the
16 rapidly growing market for reverse mortgages.

(b) According to the American Association of Retired Persons (AARP) and other senior citizen groups, reverse mortgages are often a valuable financial tool for senior citizens who are “equity rich but cash poor.” However, senior groups also note that the rapid expansion of reverse mortgages has been accompanied by aggressive marketing and reports of abuse, especially when reverse mortgages are marketed along with annuities, long-term life insurance, or other financial investment products. Because reverse mortgages erode equity in what is typically the primary asset of most senior citizens, the AARP recommends that senior citizens should weigh all alternatives before considering a reverse mortgage. The AARP strongly advises against using the proceeds of a reverse mortgage for the purchase of annuities or other financial investments, since the high cost of obtaining a reverse mortgage often exceeds any likely returns.

(c) As a number of recent lawsuits and media reports in California make clear, the inappropriate marketing of reverse mortgages and ancillary financial products to senior citizens is growing, often creating substantial loss in personal estates and home equity. Existing law currently provides little recourse for senior citizens who ill-advisedly, and without full understanding, purchased an otherwise legitimate product. In enacting the Reverse Mortgage Elder Protection Act of 2009, it is not the intent of the Legislature to discourage the use of reverse mortgages, which often provide substantial benefits to senior citizens. Rather, anticipating the continued rapid growth in the reverse mortgage market, the Reverse Mortgage Elder Protection Act of 2009 seeks to ensure that senior citizens will make informed decisions and that persons who offer, sell, or arrange the sale of reverse mortgages to senior citizens will act in the best interest of a sometimes vulnerable population.

SEC. 3. Section 1923.2 of the Civil Code is amended to read:
1923.2. A reverse mortgage loan shall comply with all of the following requirements:

(a) Prepayment, in whole or in part, shall be permitted without penalty at any time during the term of the reverse mortgage loan. For the purposes of this section, penalty does not include any fees, payments, or other charges that would have otherwise been due upon the reverse mortgage being due and payable.

1 (b) A reverse mortgage loan may provide for a fixed or
2 adjustable interest rate or combination thereof, including compound
3 interest, and may also provide for interest that is contingent on the
4 value of the property upon execution of the loan or at maturity, or
5 on changes in value between closing and maturity.

6 (c) A reverse mortgage may include costs and fees that are
7 charged by the lender, or the lender's designee, originator, or
8 servicer, including costs and fees charged upon execution of the
9 loan, on a periodic basis, or upon maturity.

10 (d) If a reverse mortgage loan provides for periodic advances
11 to a borrower, these advances shall not be reduced in amount or
12 number based on any adjustment in the interest rate.

13 (e) A lender who fails to make loan advances as required in the
14 loan documents, and fails to cure an actual default after notice as
15 specified in the loan documents, shall forfeit to the borrower treble
16 the amount wrongfully withheld plus interest at the legal rate.

17 (f) The reverse mortgage loan may become due and payable
18 upon the occurrence of any one of the following events:

19 (1) The home securing the loan is sold or title to the home is
20 otherwise transferred.

21 (2) All borrowers cease occupying the home as a principal
22 residence, except as provided in subdivision (g).

23 (3) Any fixed maturity date agreed to by the lender and the
24 borrower occurs.

25 (4) An event occurs which is specified in the loan documents
26 and which jeopardizes the lender's security.

27 (g) Repayment of the reverse mortgage loan shall be subject to
28 the following additional conditions:

29 (1) Temporary absences from the home not exceeding 60
30 consecutive days shall not cause the mortgage to become due and
31 payable.

32 (2) Extended absences from the home exceeding 60 consecutive
33 days, but less than one year, shall not cause the mortgage to become
34 due and payable if the borrower has taken prior action which
35 secures and protects the home in a manner satisfactory to the
36 lender, as specified in the loan documents.

37 (3) The lender's right to collect reverse mortgage loan proceeds
38 shall be subject to the applicable statute of limitations for written
39 loan contracts. Notwithstanding any other provision of law, the
40 statute of limitations shall commence on the date that the reverse

1 mortgage loan becomes due and payable as provided in the loan
2 agreement.

3 (4) The lender shall prominently disclose in the loan agreement
4 any interest rate or other fees to be charged during the period that
5 commences on the date that the reverse mortgage loan becomes
6 due and payable, and that ends when repayment in full is made.

7 (h) The first page of any deed of trust securing a reverse
8 mortgage loan shall contain the following statement in 10-point
9 boldface type: "This deed of trust secures a reverse mortgage loan."

10 (i) A lender or any other person that participates in the
11 origination of the mortgage shall not require an applicant for a
12 reverse mortgage to purchase an annuity as a condition of obtaining
13 a reverse mortgage loan.

14 (1) The lender or any other person that participates in the
15 origination of the mortgage shall not do either of the following:

16 (A) Participate in, be associated with, or employ any party that
17 participates in or is associated with any other financial or insurance
18 activity, unless the lender maintains procedural safeguards designed
19 to ensure that individuals participating in the origination of the
20 mortgage shall have no involvement with, or incentive to provide
21 the prospective borrower with, any other financial or insurance
22 product.

23 (B) Refer the borrower to anyone for the purchase of an annuity
24 or other financial or insurance product prior to the closing of the
25 reverse mortgage or before the expiration of the right of the
26 borrower to rescind the reverse mortgage agreement.

27 (2) This subdivision does not prevent a lender from offering or
28 referring borrowers for title insurance, hazard, flood, or other peril
29 insurance, or other similar products that are customary and normal
30 under a reverse mortgage loan.

31 (3) *A lender or any other person who participates in the*
32 *origination of a reverse mortgage loan to which this subdivision*
33 *would apply, and who complies with paragraph (1) of subsection*
34 *(n), and with subsection (o), of Section 1715z-20 of Title 12 of the*
35 *United States Code, and any regulations and guidance promulgated*
36 *under that section, as amended from time to time, in offering the*
37 *loan, regardless of whether the loan is originated pursuant to the*
38 *program authorized under Section 1715z-20 of Title 12 of the*
39 *United States Code, and any regulations and guidance promulgated*

1 *under that section, shall be deemed to have complied with this*
2 *subdivision.*

3 ~~(k)~~

4 (j) Prior to accepting a final and complete application for a
5 reverse mortgage the lender shall provide the borrower with a list
6 of not fewer than 10 counseling agencies that are approved by the
7 United States Department of Housing and Urban Development to
8 engage in reverse mortgage counseling as provided in Subpart B
9 of Part 214 of Title 24 of the Code of Federal Regulation. The
10 counseling agency shall not receive any compensation, either
11 directly or indirectly, from the lender or from any other person or
12 entity involved in originating or servicing the mortgage or the sale
13 of annuities, investments, long-term care insurance, or any other
14 type of financial or insurance product. This subdivision does not
15 prevent a counseling agency from receiving financial assistance
16 that is unrelated to the offering or selling of a reverse mortgage
17 loan and that is provided by the lender as part of charitable or
18 philanthropic activities.

19 ~~(h)~~

20 (k) A lender shall not accept a final and complete application
21 for a reverse mortgage loan from a prospective applicant or assess
22 any fees upon a prospective applicant without first receiving a
23 certification from the applicant or the applicant's authorized
24 representative that the applicant has received counseling from an
25 agency as described in subdivision ~~(k)~~ (j). The certification shall
26 be signed by the borrower and the agency counselor, and shall
27 include the date of the counseling and the name, address, and
28 telephone number of both the counselor and the borrower.
29 Electronic facsimile copy of the housing counseling certification
30 satisfies the requirements of this subdivision. The lender shall
31 maintain the certification in an accurate, reproducible, and
32 accessible format for the term of the reverse mortgage.

33 ~~(m)~~

34 (l) A lender shall not make a reverse mortgage loan without
35 first complying with, or in the case of brokered loans ensuring
36 compliance with, the requirements of Section 1632, if applicable.

37 SEC. 4. Section 1923.5 of the Civil Code is amended to read:

38 1923.5. (a) No reverse mortgage loan application shall be
39 taken by a lender unless the loan applicant has received from the

1 lender, prior to receiving counseling, the following plain language
2 statement in conspicuous 16-point type or larger:

3
4 IMPORTANT NOTICE
5 TO REVERSE MORTGAGE LOAN APPLICANT
6

7 A REVERSE MORTGAGE IS A COMPLEX FINANCIAL
8 TRANSACTION THAT PROVIDES A MEANS OF USING THE
9 EQUITY YOU HAVE BUILT UP IN YOUR HOME, OR THE
10 VALUE OF YOUR HOME, AS A SOURCE OF ADDITIONAL
11 INCOME. IF YOU DECIDE TO OBTAIN A REVERSE
12 MORTGAGE LOAN, YOU WILL SIGN BINDING LEGAL
13 DOCUMENTS THAT WILL HAVE IMPORTANT LEGAL AND
14 FINANCIAL IMPLICATIONS FOR YOU AND YOUR ESTATE.
15 IT IS THEREFORE IMPORTANT TO UNDERSTAND THE
16 TERMS OF THE REVERSE MORTGAGE AND ITS EFFECT.
17 BEFORE ENTERING INTO THIS TRANSACTION, YOU ARE
18 REQUIRED TO CONSULT WITH AN INDEPENDENT LOAN
19 COUNSELOR. A LIST OF APPROVED COUNSELORS WILL
20 BE PROVIDED TO YOU BY THE LENDER. YOU MAY ALSO
21 WANT TO DISCUSS YOUR DECISION WITH FAMILY
22 MEMBERS OR OTHERS ON WHOM YOU RELY FOR
23 FINANCIAL ADVICE.

24 SENIOR CITIZEN ADVOCACY GROUPS ADVISE AGAINST
25 USING THE PROCEEDS OF A REVERSE MORTGAGE TO
26 PURCHASE AN ANNUITY OR RELATED FINANCIAL
27 PRODUCTS. IF YOU ARE CONSIDERING USING YOUR
28 PROCEEDS FOR THIS PURPOSE, YOU SHOULD DISCUSS
29 THE FINANCIAL IMPLICATIONS OF DOING SO WITH
30 YOUR COUNSELOR AND FAMILY MEMBERS.

31
32 (b) (1) In addition to the plain statement notice described in
33 subdivision (a), no reverse mortgage loan application shall be taken
34 by a lender unless the lender provides the prospective borrower,
35 prior to his or her meeting with a counseling agency on reverse
36 mortgages, with a written checklist ~~which conspicuously alerts,~~
37 *or in the event that the prospective borrower seeks counseling*
38 *prior to requesting a reverse mortgage loan application from the*
39 *reverse mortgage lender, the counseling agency shall provide the*
40 *prospective borrower with a written checklist. The written checklist*

1 *shall conspicuously alert* the prospective borrower, in 12-point
2 type or larger, that he or she should discuss with the agency
3 counselor the following issues:

4 (A) How unexpected medical or other events that cause the
5 prospective borrower to move out of the home, either permanently
6 or for more than one year, earlier than anticipated will impact the
7 total annual loan cost of the mortgage.

8 (B) The extent to which the prospective borrower's financial
9 needs would be better met by options other than a reverse
10 mortgage, including, but not limited to, less costly home equity
11 lines of credit, property tax deferral programs, or governmental
12 aid programs.

13 (C) Whether the prospective borrower intends to use the
14 proceeds of the reverse mortgage to purchase an annuity or other
15 insurance products and the consequences of doing so.

16 (D) The effect of repayment of the loan on nonborrowing
17 residents of the home after all borrowers have died or permanently
18 left the home.

19 (E) The prospective borrower's ability to finance routine or
20 catastrophic home repairs, especially if maintenance is a factor
21 that may determine when the mortgage becomes payable.

22 (F) The impact that the reverse mortgage may have on the
23 prospective borrower's tax obligations, eligibility for government
24 assistance programs, and the effect that losing equity in the home
25 will have on the borrower's estate and heirs.

26 (2) The checklist required in paragraph (1) shall be signed by
27 the agency counselor, if the counseling is done in person, and by
28 the prospective borrower and returned to the lender along with the
29 certification of counseling required under subdivision ~~(t)~~ (k) of
30 Section 1923.2, and the loan application shall not be approved
31 until the signed checklist is provided to the lender. A copy of the
32 checklist shall be ~~made~~ provided to the borrower.